

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2014-____-C

FRAM Group Operations, LLC)	COMPLAINT AND PETITION
)	FOR DECLARATORY ORDER
v.)	
)	
AccessPoint, Incorporated)	
)	
)	

COMPLAINT AND PETITION FOR DECLARATORY ORDER

FRAM Group Operations, LLC (“FRAM Group”) brings this Complaint and Petition for Declaratory Order, pursuant to 26 S.C. Code Ann. Regs. 103-825 and 103-826, seeking a ruling from the South Carolina Public Service Commission (the “Commission”) declaring that AccessPoint, Incorporated (“AccessPoint”) has overcharged FRAM Group for telecommunications services and ordering AccessPoint to issue a refund to FRAM Group as outlined herein.

In support of this Petition, FRAM Group states as follows:

Identification of Parties

1. FRAM Group manufactures various parts for automobiles, is authorized to do business in South Carolina and has a business location at 120 Ridgeview Center Drive in Duncan, (Spartanburg County) South Carolina (the “Location”).
2. AccessPoint is authorized to do business in South Carolina and has been certified by this Commission as both an interexchange carrier (Docket No. 1996-218-C) and a local

exchange carrier (Docket No. 1998-058-C). Access Point is a “telephone utility.” According to the Commission’s DMS, AccessPoint can be served at the following address:

100 Crescent Green, Suite 109
Cary, NC 27518

Facts and Nature of Dispute

1. From 1999 until August of 2011, FRAM Group was a subsidiary of Honeywell. As such, Honeywell undertook various activities, including but not limited to the procurement of telephone and data services, on behalf of FRAM Group.

2. At some point prior to 2007, Honeywell (on behalf of FRAM Group) entered into an agreement with Access Point through which Access Point began providing resold telecommunications services (the “Services”) to FRAM Group at the Location. In providing the Services to FRAM Group at the Location, Access Point resold the underlying services of AT&T South Carolina¹ under Account No. 1004490 (the “Account”).

3. The particular Services provided by Access Point to FRAM Group consisted of inbound and outbound PBX Trunks and various features associated with these Trunks.

4. At some time prior to June 30, 2010, Honeywell placed an order (DW42P599) with AT&T South Carolina to transition the Services being provided to FRAM Group at the Location from Access Point to AT&T South Carolina.

5. On June 30, 2010, AT&T South Carolina fulfilled Order DW42P599, and became the sole provider of local exchange services to FRAM Group at the Location as of that date. In particular, AT&T South Carolina ported all numbers previously in the control of Access Point,

¹ BellSouth Telecommunications, LLC d/b/a AT&T South Carolina and/or one of its predecessors providing local exchange service in South Carolina.

including but not limited to DID service, to a new AT&T South Carolina local exchange service. As a result of the port, no facilities were left in a working condition with Access Point.

6. At some point subsequent to June 30, 2010, AT&T South Carolina sent Access Point a line loss report specifically showing that the lines were ported away from the Location.

7. On or about November 23, 2010, Honeywell (again on behalf of FRAM Group) requested that Access Point cancel the Account, as AT&T South Carolina had transitioned the Services away from Access Point and was providing local exchange services to FRAM Group. A copy of Honeywell's request to cancel the Account is attached hereto as **Exhibit One**.

8. As set out in **Exhibit One**, Honeywell informed Access Point that "these lines were ported out to AT&T back in June" of 2010.

9. Access Point received the request to cancel the Account on November 23, 2010.

10. On November 23, 2010, at the latest, Access Point knew that the lines that had made up the Account had been transferred to AT&T South Carolina in June of 2010.

11. As of November 23, 2010, Access Point did not provide, and FRAM Group did not receive, any telecommunications services at the Location other than those provided directly by AT&T South Carolina.

12. In fact, beginning on June 30, 2010, on the date that AT&T South Carolina began providing services to the Location, Access Point did not provide any telecommunications services to Access Point at the Location.

13. Upon information and belief, as of June 30, 2010, Access Point did not incur wholesale charges from AT&T South Carolina associated with facilities or services provided to the Location. In particular, Access Point incurred no charges from AT&T South Carolina in

connection with the local services that Access Point provided AT&T South Carolina for resale by FRAM Group.

14. Despite its receipt of Honeywell's request to cancel the Account, Access Point failed to honor the request and did not cancel the Account.

15. Instead, Access Point continued to bill FRAM Group for service at the Location even though Access Point was providing no services to the Location, and even though AT&T South Carolina was providing services to the Location. As described below, Access Point continued to bill Fram Group until November 26, 2013.

16. On November 26, 2013, FRAM Group emailed a request to Access Point seeking a refund of all charges billed by Access Point and paid on behalf of FRAM Group from the disconnection date request of November 23, 2010 forward.

17. Despite numerous phone calls and emails from and on behalf of FRAM Group, Access Point has refused to refund the full amount of overcharges it billed FRAM Group.

18. In April of 2014, FRAM Group initiated an informal complaint process with the South Carolina Office of Regulatory Staff ("ORS").

19. After an investigation, on May 21, 2014 the ORS concluded "that Access Point should refund all charges from November 2010 to the time upon which services were terminated in October 2013." Email message from Jamie Peebles, attached hereto as **Exhibit Two**.

20. Access Point did not refund all charges in response to the ORS' conclusion.

21. On June 30, 2014, an attorney for FRAM Group sent a letter to Access Point demanding a full refund of all overcharges. FRAM Group never received a response from Access Point.

Law

22. S.C. Code Ann. Regs. Section 103-623.1 provides:

if the telephone utility has willfully overcharged any customer, the telephone utility shall refund the difference, plus interest, as prescribed by the commission, for the period of time that can be determined that the customer was overcharged.

23. S.C. Code Ann. Regs. Section 103-623.2 provides:

If the telephone utility has inadvertently overcharged a customer as a result of a misapplied schedule or any other human or machine error, the telephone utility shall, for any amount of one dollar (\$1.00) or more (amounts less than \$1.00 will be credited to account) at the customer's option, credit, or refund the excess amount paid by that customer or credit the amount billed as provided by the following:

a. If the interval during which the customer was overcharged can be determined, then the telephone utility shall credit or refund the excess amount charged during the interval, provided that the applicable statute of limitations shall not be exceeded.

b. If the interval during which the customer was overcharged cannot be determined, then the telephone utility shall credit or refund the excess amount charged during the 12-month period preceding the date when the error was discovered.

c. If the exact amount of the overcharge incurred by the customer during the billing periods subject to adjustment cannot be determined, then the credit or refund shall be based on an appropriate estimated amount of excess payment.

Claims

24. Access Point overcharged FRAM Group for services -from June 30, 2010 until November 26, 2013- by an amount totaling \$35,491.56. In fact, Access Point should have charged FRAM Group nothing for that period of time.

25. Access Point overcharged FRAM Group willfully, with full knowledge both that FRAM Group had terminated its relationship with Access Point, and that Access Point was no longer providing any services to FRAM Group.

26. As a result, S.C. Code Ann. Regs. Section 103-623.1 entitles FRAM Group to a refund of \$35,491.56 from Access Point, plus interest at the Commission's approved rate compounded annually.

27. In the alternative, Access Point overcharged FRAM Group inadvertently from June 30, 2010 until November of 2013.

28. Access Point's overcharge of FRAM Group entitles FRAM Group to a refund of \$35,491.56 from Access Point.

29. Further in the alternative, Access Point has received \$35,491.56 in funds from FRAM to which it is not entitled. It would be unfair for Access Point to retain these funds, in view of the fact that Access Point did not provide any services to FRAM Group in exchange for those funds.

Conclusion and Prayer for Relief

Wherefore, based upon the foregoing, FRAM Group prays that the Commission issue a ruling:

1. Declaring that Access Point willfully overcharged FRAM Group as described above pursuant to S.C. Code Ann. Regs. Section 103-623.1, and ordering Access Point to provide a refund to FRAM Group in the principal amount of \$35,491.56 plus interest compounded annually at the rate approved by the Commission;
2. In the alternative, declaring that Access Point inadvertently overcharged FRAM Group as described above pursuant to S.C. Code Ann. Regs. Section 103-623.2, and ordering Access Point to provide a refund to FRAM Group in the amount of \$35,491.56;

3. Further in the alternative, declaring that Access Point has received funds from FRAM Group in the amount of \$35,491.56; and
4. Granting such other relief to FRAM Group as is just and proper.

Respectfully submitted,

s/ John J. Pringle, Jr.
John J. Pringle, Jr., Esq.
ADAMS AND REESE LLP
1501 Main Street, 5th Floor
Columbia, SC 29201
Tel: (803) 343-1270
Fax: (803) 799-8479

Counsel for FRAM Group, Operations, LLC

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